

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1913 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 Yes 2 to 5 No

C M RATHOD

Versus

GUJARAT MARITIME BOARD

Appearance:

MR PARESH UPADHYAY for Petitioner

MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 19/06/98

ORAL JUDGEMENT

Rule.

By way of this Special Civil Application the petitioner has challenged the order of termination dated 7.3.1998 passed by the respondent Gujarat Maritime Board.

The petitioner after due process of selection was appointed as Port Officer by order dated 4.1.1994 on a probation for a period of two years. He joined the

duties on 10.1.1994. The said probation period of two years came to be over on 9.1.1996. However, after more than a year by order dated 20.3.1997 the period of probation was extended till 9.7.1997 with retrospective effect. The petitioner made a representation in this regard on 11.4.1997. The probation period was further extended till 9.1.1998 by order dated 8.7.1997. Further extension was given by order dated 9.1.1998 for a period upto 9.3.1998. The services of the petitioner were terminated by the impugned order dated 7.3.1998 as in the opinion of the respondent his services were not satisfactory during the said period of probation.

It is contended by Mr. Paresh Upadhyay, learned counsel for the petitioner that the order of termination is ex-facie illegal as the petitioner deemed to have been confirmed on completion of two years' probation i.e. on 9.1.1996. It is also contended that in any case the period of probation could not have been extended for a further period not exceeding two years. In this regard he has referred to Rule 10A of the Gujarat Civil Services Classification and Recruitment (General) (Amendment) Rules, 1994 (hereinafter referred to as the Rule of 1994). On the other hand it is contended by Ms. Mandavia, learned counsel appearing for the respondent that the petitioner's probation was extended from time to time and the last extension was upto 9.3.1998. All the extensions having been once accepted by the petitioner, it is not open for him to say now that the order of extension was wrong. The services of the petitioner was terminated before completion of the last extension which was given for a period upto 9.3.1998. Thus, according to Ms. Mandavia, there is no infirmity in the order of termination.

The question whether an employee at the end of probationary period automatically gets confirmation in the post or whether the order of confirmation or any specific act on the part of the employer confirming the employee is necessary has been considered by the apex court in various decisions. Recently, it has been considered in the case of WASIM BEG VS. STATE OF U.P. AND OTHERS reported in 1998(3) SCC 321. The apex court after reviewing all the earlier decisions held that where the rules provide for a maximum period of probation beyond which probation cannot be extended, at the end of the maximum probationary period there will be a deemed confirmation of the employee unless rules provide anything contrary.

Thus, to appreciate the controversy in the

instant case it would be necessary to look into the provisions of Section 10A under Rules 1994 which read as follows:-

"10A Period of probation - Notwithstanding anything contained in these rules or any rules or orders relating to the requirement to any service or post included in the State Service or subordinate service, a candidate appointed to Class I or Class II service or post by direct selection, shall be on probation for a period of two years and in case of his appointment to Class III service or post for a period of one year;

Provided that the appointing authority may, if it thinks fit in any case, extend the period of probation for a further period not exceeding two years in case of Class I and Class II service or post and one year in case of Class III service or post;

Provided further that if in any case passing of a departmental examination during the period of probation is stipulated as a prerequisite condition for completion of such probation period and where the probationer could not pass the same within the prescribed chances admissible to him under the rules reasons beyond his control, the above ceiling on the period of probation shall not be applicable."

Rule 10A provides that in case of Class I officer the probation period shall be of two years. The proviso appended to the said rules says that the probation can be extended for a further period of not exceeding two years in case of Class I officers. In the instant case, the petitioner completed the period of probation on 9.1.1996. Thus, under the Rule of 1964 probation cannot be extended exceeding two years i.e. beyond 9.1.1998. Thus, the extension of probation for the period 9.1.1998 to 9.3.1998 is without authority of law. I am unable to agree with Ms. Mandavia that once the petitioner has accepted the extension of probation, he cannot challenge the same. It is well established that there cannot be estoppel against law. Thus, the petitioner on expiry of period of extended or second probation deemed to have been confirmed on 9.1.1998. In view of this, the impugned order of termination on the basis of non-satisfactory performance during the period of probation is ex-facie illegal and void.

Consequently, this Special Civil Application is allowed. The impugned order dated 7.3.1998 passed by the respondent Board is quashed and set aside. The petitioner shall be deemed to be continued in service and he shall be entitled all consequential benefits as if his services were never terminated. Rule is made absolute.

Ms. Mandavia, ld. counsel appearing for the respondent submits that the effect of this order may be suspended for a period of two weeks to seek instructions from the client whether they want to approach to the Division Bench by way of Letters Patent Appeal. The order is kept under suspension for a period of two weeks from today.

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